

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Simon Wang	Team: Squad #7	CCRB Case #: 201802185	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Tuesday, 03/13/2018 7:17 PM	Location of Incident: Front of 207 Broad Street	Precinct: 120	18 Mo. SOL 9/13/2019	EO SOL 9/13/2019	
Date/Time CV Reported Tue, 03/13/2018 9:46 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 03/20/2018 11:09 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Elmer Pastran	06851	956154	120 PCT
2. POM Kyle Erickson	16014	957567	120 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Kyle Erickson	Force: Police Officer Kyle Erickson used physical force against § 87(2)(b)	
B.POM Elmer Pastran	Force: Police Officer Elmer Pastran used physical force against § 87(2)(b)	
C.POM Kyle Erickson	Abuse: Police Officer Kyle Erickson searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
D.POM Elmer Pastran	Abuse: Police Officer Elmer Pastran searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
§ 87(2)(g)		

Case Summary

On March 13, 2018, § 87(2)(b) filed this complaint with IAB. On March 20, 2018, this complaint was received at the CCRB via referral number 18-10609.

On March 13, 2018, at approximately 7:17 p.m. § 87(2)(b) and § 87(2)(b) were pulled over in front of 207 Broad Street in Staten Island by PO Kyle Erickson and PO Elmer Pastran of the 120th Precinct. § 87(2)(b) was ordered to exit the vehicle. PO Erickson and PO Pastran pushed § 87(2)(b) to the ground and handcuffed him (**Allegations A and B: Force – § 87(2)(g)**). PO Erickson and PO Pastran then searched the vehicle (**Allegations C and D: Abuse of Authority – § 87(2)(g)**). § 87(2)(g)

§ 87(2)(b) was arrested for § 87(2)(b)

§ 87(2)(b) was issued a summons for § 87(2)(b) (**BR 1**). § 87(2)(b) was removed to the hospital via ambulance from the scene of the arrest. After he was pushed to the ground, § 87(2)(b) complained of pain to a pre-existing injury. On § 87(2)(b), § 87(2)(b) pleaded guilty to resisting arrest. § 87(2)(b)

There was body worn camera video footage of this incident recorded by PO Pastran and PO Erickson.

On May 22, 2018, this case was closed as “complainant unavailable” after contact attempts to § 87(2)(b) and § 87(2)(b) were exhausted. On December 27, 2018, this case was re-opened and investigated based upon the body worn camera video footage, § 87(2)(g)

NYPD Risk Management was notified of this incident.

Findings and Recommendations

Allegation (A) Force: Police Officer Kyle Erickson used physical force against § 87(2)(b)

Allegation (B) Force: Police Officer Elmer Pastran used physical force against § 87(2)(b)

Neither § 87(2)(b) nor § 87(2)(b) could be contacted by the CCRB despite extensive contact attempts to them, their families and § 87(2)(b)'s defense attorney. PO Pastran could not be interviewed for this investigation because he was on extended leave while deployed in the US military.

The use of force against § 87(2)(b) was recorded in PO Pastran and PO Erickson's body worn camera footage. (See **BR 2** for PO Erickson's BWC video and **BR 3** for PO Pastran's BWC video). The body worn camera footage began recording as PO Erickson and PO Pastran were already standing next to § 87(2)(b)'s vehicle speaking to them. § 87(2)(b) was in the

driver's seat and § 87(2)(b) was in the front passenger seat of the vehicle when they were pulled over by PO Erickson and PO Pastran in a marked patrol car. In his CCRB statement, PO Erickson alleged that § 87(2)(b)'s vehicle had defective tail lights. PO Erickson's intention was to inform § 87(2)(b) of the defect. PO Erickson ordered § 87(2)(b) to exit the vehicle because he smelled the odor of marijuana and observed flakes of marijuana on § 87(2)(b)'s red hooded sweatshirt. § 87(2)(b) informed the officers that he had a pre-existing injury to his stomach where he had been allegedly stabbed weeks prior. § 87(2)(b) lifted his shirt to show the bandage to PO Erickson. § 87(2)(b) exited the vehicle as directed and took a black jacket out of the vehicle. PO Erickson told § 87(2)(b) to keep the jacket in the vehicle. § 87(2)(b) took out the jacket and shook it stating there was nothing in the jacket. In his CCRB statement, PO Erickson initially stated that he had observed marijuana residue on the black jacket, which § 87(2)(b) shook off when he took the jacket out of the car. However, after viewing his BWC video during the interview, PO Erickson stated that he did not see the marijuana residue on the jacket, but that it was on the red sweatshirt § 87(2)(b) was wearing, and that he did not see the marijuana residue being shaken off. In the BWC video, PO Erickson asked for the jacket and § 87(2)(b) pulled his jacket away stating that he refused to be searched for no reason. PO Pastran also reached for the jacket and § 87(2)(b) also pulled the jacket away from him.

In his CCRB statement, PO Erickson stated he was concerned when § 87(2)(b) refused to put down the jacket or to relinquish it to the officers indicating he may have been concealing something in the jacket.

In the BWC video, PO Erickson and PO Pastran both repeatedly told § 87(2)(b) to relax. § 87(2)(b) who had exited the vehicle at this point also told § 87(2)(b) to relax. PO Erickson grabbed § 87(2)(b)'s left arm in which he was holding the jacket, but § 87(2)(b) held his arm and his jacket close to his body. § 87(2)(b) repeatedly stated, "It's in my possession." PO Pastran told § 87(2)(b) that if § 87(2)(b) did not relax he would be placed in handcuffs. PO Pastran and PO Erickson both began to grab § 87(2)(b)'s arms. § 87(2)(b) pulled and twisted his arms away from the officers. While PO Erickson and PO Pastran attempted to grab § 87(2)(b)'s arms, PO Erickson could be heard saying to PO Pastran, "Take him down." Both officers pushed § 87(2)(b) face down onto the ground where he was handcuffed laying on his stomach. As they finished handcuffing him, other officers arrived on location. An ambulance was called to the scene.

The TRI reports (**BR 4**) indicated that § 87(2)(b) used "pushing/shoving" and "wrestling/grappling" against the officers and that PO Erickson and PO Pastran used a "forcible takedown" against § 87(2)(b). The reasons for the use of force were "to overcome resistance" and "defense of self."

Because § 87(2)(b) could not be contacted for this investigation, his medical records could not be obtained. The TRI reports for this incident indicated that § 87(2)(b) was removed to the hospital due to a pre-existing injury. As part of the ISAR report (**BR 5**), Captain Tania Kinsella spoke to § 87(2)(b) at Richmond University Medical Center. In the report Capt. Kinsella noted that § 87(2)(b) stated he was thrown to the ground, which resulted in pain from a prior injury for which he had surgery before. The AIDED (**BR 6**) report was consistent with the ISAR.

Patrol Guide procedure 221-01 (**BR 7**) directs officers to use only the reasonable force necessary to gain control or custody of a subject.

§ 87(2)(g)

Allegation (C) Abuse of Authority: Police Officer Kyle Erickson searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation (D) Abuse of Authority: Police Officer Elmer Pastran searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

In his CCRB statement, PO Erickson stated that when he arrived at the front passenger window of § 87(2)(b)'s vehicle which had its windows rolled down, he smelled the odor of marijuana emanating from the vehicle. PO Erickson has been trained to identify the odor of marijuana from his police academy training as well as his experience in prior marijuana arrests. PO Erickson did not know whether the odor was of burning marijuana.

In his BWC video footage (**BR 2 – at 18:56:34**), PO Erickson informed § 87(2)(b) that he was ordering him out of the vehicle because § 87(2)(b) had informed him earlier that he had been “smoking,” that there were ashes “all over” him and because it smelled like marijuana. § 87(2)(b) stated that the ashes were from cigarettes. Just before exiting the car, § 87(2)(b) stated that he had been smoking marijuana before he got into the car, but denied that he had anything in the car.

The smell of marijuana smoke, with nothing more, is sufficient to provide police officers with probable cause to search an automobile and its occupants. In People v. Chestnut, 43 A.D.2d 260 (App. Div. 1974) (**BR 12**).

§ 87(2)(g)

§ 87(2)(g)

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§ 87(2)(g) [REDACTED]
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Allegations not Pleaded

Abuse of Authority: Arrest - As discussed in Allegations A and B, § 87(2)(b) [REDACTED] physically prevented officers from carrying out a search of his jacket and passively resisted officers attempts to handcuff him. Accordingly, he was placed under arrest for § 87(2)(b) [REDACTED]. Because § 87(2)(b) [REDACTED]'s arrest was not based solely upon the alleged contraband, an allegation of unlawful arrest has not been pleaded.

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**BR 13**).
- § 87(2)(b)
[REDACTED]
[REDACTED]
 - [REDACTED]
[REDACTED]
[REDACTED]
- PO Kyle Erickson has been a member of service for three years and has been a subject in three other CCRB complaints and six allegations, none of which were substantiated.
- PO Elmer Pastran has been a member of service for four years and has been a subject in six other CCRB complaints and 11 allegations, of which one was substantiated.
 - CCRB case number 201706170 involved substantiated allegation of frisk against PO Pastran. The Board recommended Command Discipline B. The NYPD did not impose any discipline.
- PO Erickson and PO Pastran are both named as subject officers in CCRB case number 201802185, which is being submitted to the same panel as this case for review. § 87(2)(g)
[REDACTED]

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation.
- As of July 17, 2019, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint (**BR 15**).

- § 87(2)(b)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Squad No.: 7

Investigator:	_____	<u>SI Simon Wang</u>	_____
	Signature	Print Title & Name	Date

Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date